

**Definitive Map Review
Parish of Buckland Monachorum**

Report of the Head of Highways, Capital Development and Waste

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that:

- (a) Modification Orders be made to modify the Definitive Map and Statement by:**
- (i) deleting part of Footpath No. 38, between points I – J – K as shown on drawing HCW/PROW/14/12 (Proposal 3);**
 - (ii) adding a public footpath between points V – W as shown on drawing number HCW/PROW/14/15 (Proposal 6);**
- (b) No Modification Orders be made in respect of Proposals 4 and 5.**

1. Introduction

This report examines four proposals arising from the Definitive Map Review in the parish of Buckland Monachorum.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 30 footpaths and 3 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 May 1958.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following orders and agreements have been made and confirmed:

Devon County Council (Footpath No. 1, Buckland Monachorum) Public Path Diversion Order 1971;

Devon County Council (Footpath No. 6, Buckland Monachorum) Public Path Diversion Order 1971;

Devon County Council (Footpath No. 10, Buckland Monachorum) Public Path Diversion Order 1976;

Devon County Council (Footpath No. 32, Buckland Monachorum) Public Path Diversion Order 1976;

Devon County Council (Footpath No. 33, Buckland Monachorum) Public Path Diversion Order 1976;

Devon County Council (Footpath No. 1, Buckland Monachorum) Public Path Diversion Order 1978;

Devon County Council (Footpath No. 10, Buckland Monachorum) Public Path Diversion Order 1978;
Devon County Council (Footpath No. 22, Buckland Monachorum) Public Path Diversion Order 1978;
Devon County Council (Footpath No. 36, Buckland Monachorum) Public Path Diversion Order 1979;
Department of Transport (Footpath No. 5 (part), Buckland Monachorum) Town & Country Planning At 1971 Stopping Up of Highways Order 1980;
Devon County Council (Footpath No. 40, Buckland Monachorum) Public Path Diversion Order 1980;
Devon County Council (Footpath No. 3, Buckland Monachorum) Public Path Diversion Order 1995;
Devon County Council (Footpath No. 32, Buckland Monachorum) Public Path Diversion Order 2000;
Devon County Council (Footpath No. 33, Buckland Monachorum) Public Path Diversion Order 2000;
Devon County Council (Footpath No. 12, Buckland Monachorum) Public Path Diversion Order 2001; and
Footpath No. 48, Buckland Monachorum Public Path Creation Agreement 2013.

Legal Event Modification Orders will be made for these changes under delegated powers in due course.

The current review began with an opening meeting held in April 2013 with a public meeting in the parish. Three proposals arose from previous reviews with an additional proposal from initial consultations, along with several diversions, which can be dealt with under delegated powers.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Philip Sanders	– no specific comments on proposals
West Devon Borough Council	– no comment
Buckland Monachorum Parish Council	– comments included in the appendix
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

Specific responses are detailed in the appendix to this report and included in the background papers.

5. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with

Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

6. Legal Considerations

The implications/consequences of the recommendation(s) have been taken into account in the preparation of the report.

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

9. Conclusion

It is recommended that Modification Orders be made in respect of Proposals 3 and 6, but that no Modification Orders be made in respect of Proposals 4 and 5.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the West Devon area.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Yelverton Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gattrell

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Background Paper	Date	File Ref.
Correspondence File	2013-14	DMR/BM

cg090514pra
sc/cr/DMR Parish of Buckland Monachorum
04 040614

A. Basis of Claim

The Highways Act 1980, Section 31(1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Wildlife and Countryside Act 1981, Section 53(3)(c) enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

The Wildlife and Countryside Act 1981, Section 53(5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Section 67(1) of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles where a way was also shown on the Definitive Map and Statement as a footpath, bridleway or restricted byway.

Section 67(2) of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out. The main exceptions are that:

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

1 Proposal 3: Proposed deletion of part of Footpath No. 38 along Axtown Lane, where it has dual status with county road Y2125, as shown between points I – J – K on plan HCW/PROW/14/12.

Recommendation: That a Modification Order be made to delete the section of Footpath No. 38, Buckland Monachorum between the points I – J – K, as shown on the relevant plan.

1.1 Background

- 1.1.1 It came to the Officer's attention as part of the current review of the Definitive Map that part of Axtown Lane near Yelverton has dual status with county road Y2125.

1.2 Description of the Route

- 1.2.1 The route starts at the junction with the C510 Crapstone Road on the western side of Roborough Down at point I and proceeds south westwards along a tarmac lane to point J before turning southwards and then south westwards to a former gateway at point K.

1.3 Documentary Evidence

- 1.3.1 Greenwood's Map, 1827. The map appeared in 1827 at a scale of one inch to the mile, and includes a route in a similar position to this route as a "cross-road", enclosed for its entire length.
- 1.3.2 Tithe Map, 1842. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.
- 1.3.3 The first section from Crapstone Road is open to Roborough Down (points I – J) and no route is shown. However a closed, un-numbered and uncoloured lane is shown from just south of point J, where it turns south towards Axtown. It appears to be braced with plot 977 described as the house etc. of Axtown Estate, owned and occupied by George Cunnabeer.
- 1.3.4 Ordnance Survey mapping, 1809-1953. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

- 1.3.5 This shows the characteristics of the physical existence of the proposal route and its continuation to Axtown, besides the old gate at point K.
- 1.3.6 Finance Act, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

The proposal is shown totally excluded from any hereditament between points I – J – K to the location of an old gateway.

- 1.3.7 Bartholomew's Mapping, 1920s. Bartholomew's maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968.
- 1.3.8 The small scale permitted only the most important routes to be shown. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport, not to encourage trespass. The proposal and its continuation are shown as an inferior road, not to be recommended.
- 1.3.9 Handover Roads Records, circa 1947-72. In 1929 the County Council became the main highways authority for the county, but delegated the responsibility to the Rural District Councils of that time until 1947. These records detail those highways which were considered to be Highways Maintainable at Public Expense (HMPE). They were used as a working document in conjunction with the Unclassified County Road (UCR) Mileage Register until local government re-organisation in the early 1970s. The proposal is shown coloured in blue in the same manner as other recorded minor/unclassified county roads.
- 1.3.10 UCR Mileage Register, 1950-70s. The Register was used in conjunction with the Handover Records on a district basis. The proposal is listed as *Axtown Farm Road* in the register on the 13 April 1961 as an addition to the Tavistock Rural District UCR network.
- 1.3.11 List of Streets, circa 1970s onwards. The proposal is included as an unclassified county road on the County Council's record of highways maintainable at public expense.
- 1.3.12 Aerial photography, 1946-9 & 2006-7. The photography shows the characteristics of the physical existence of the proposal route and its continuation to Axtown.
- 1.3.13 Land Registry, 2014. The information regarding land ownership suggests that the householders along the proposal route do not have a right of access to their properties and rely on the public status of that section of Axtown Lane to access their properties.

1.3.14 Definitive Map and Statement, 1950s. Buckland Monachorum Parish Council surveyed Footpath No. 38 as running from Axtown to the top of Axtown Lane on Roborough Down, and the path was included on the Definitive Map and Statement as such.

1.4 Supporting Evidence

1.4.1 Buckland Monachourm Parish Council supports the proposal.

1.5 Landowner Evidence

1.5.1 Landowner evidence forms were received from two residents along the proposal on Axtown Lane supporting the proposal and acknowledging the status of part of Axtown Lane between points I – J – K as a county road.

1.6 Discussion

1.6.1 Since the early part of the 19th century the proposal route has physically existed, with the section points I – J unenclosed across a corner of Roborough Down and the remainder an enclosed lane. Records appear to indicate that the proposal route was a type of road, probably private, but it was open and available. In 1950 the Parish Council surveyed Footpath No. 38 as ending at Crapstone Road on Roborough Down, and it was added to the Definitive Map. However, when in 1961 part of Axtown Lane between points I – J – K was adopted and added to the County Council's minor county road network, where it remains today, the section of Footpath No. 38 running along the same should have been deleted, and which is now proposed under section 53(3)(c)(iii) of the Wildlife and Countryside Act 1980.

1.6.2 Under NERC Act 2006 section 67(1) where there are dual status routes, any vehicular rights are thought to be extinguished. However, under section 67(2)(a) of the same Act, vehicular rights are retained if the main use of the highway in the 5 years prior to the commencement date of the Act was with mechanically propelled vehicles. It is clear from the Highways Records that this proposal route has clearly been adopted. The property owners have relied on the county road for access since 1961, one of which is a livery stables, and that the main use is with vehicles.

1.7 Conclusion

1.7.1 It is therefore recommended that the section of Footpath No. 38 along Axtown Lane between points I – J – K should be deleted to remove the dual status and acknowledge the adoption of that section of Axtown Lane as a Public carriageway. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2 Proposal 4: Proposed addition of a bridleway between the county road of Berra Tor and Bridleway No. 43 on Roborough Down, as shown between points L – M – N – O and P – N on plan HCW/PROW/14/13.

Recommendation: That no Modification Order be made in respect of Proposal 4.

2.1 Background

2.1.1 The proposal was put forward by the Buckland Monachorum Parish Council as part of an earlier but incomplete review in 1978.

2.2 Description of the Route

2.2.1 The route starts at the junction with the Y2025 county road north of Berrator Farm at point L on Coppicetown Lane and runs north eastwards to Roborough Down (registered common) at point M, past Berra Tor and point N and across the common to meet Bridleway No. 43, northwest of Coppicetown at point O. A spur also runs between points P – Q - N on the south side of Berra Tor.

2.3 Documentary Evidence

2.3.1 Greenwood's Map, 1827. The map appeared in 1827 at a scale of one inch to the mile, and includes routes in similar positions to sections of the proposal between points L – M and P - Q as "*cross-roads*", enclosed for those lengths.

2.3.2 Tithe Map, 1842. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

2.3.3 Sections of the proposal route between points L – M and P – Q are coloured and un-numbered in the same manner as other recorded public highways including those which go to common land and link into the local highway network. The remainder of the proposal is not shown presumably because it is across common land. Roborough Down is listed without owners or occupiers.

2.3.4 Ordnance Survey mapping, 1809-1953. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

2.3.5 This shows the characteristics of the physical existence of the proposal route.

Finance Act, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

The proposal is shown totally excluded from any hereditament between points L – M and P – Q, with the remainder included in hereditament 590.

- 2.3.6 Aerial photography, 1946-9 & 2006-7. The photography shows the characteristics of the physical existence of the proposal route and wear patterns, but is not evidence of status.
- 2.3.7 Land Registry, 2014. The sections between points L – M – N and P – Q – N are not registered to any landowner.
- 2.3.8 Route Photographs, 2013-14. Site photographs of the proposal route show that it is well worn and regularly used. The enclosed lanes between points L – M and P – Q are accepted access routes to Roborough Down and the gates are not locked and there are no notices against or restricting public use on foot and horse.

2.4 Supporting & User Evidence

- 2.4.1 When a general review of the Definitive Map was running in 1978 the Buckland Monachorum Parish Council put forward a number of proposals including this one to be added to the Definitive Map. They described the proposed bridleway as running between Coppicetown Lane and Bridleway No. 43 and attached 3 user evidence forms from 2 member of the public with use between 1920 and 1978, and used at least on a weekly basis between 1953 and 1978 for exercising hunters and walking. They were never turned back, stopped or challenged, and never saw any notices. It was believed that it was a public right of way.
- 2.4.2 Buckland Monachorum Parish Council supports the proposal but has not submitted further user evidence in support under the current Review.

2.5 Landowner Evidence

- 2.5.1 A Landowner evidence form was received from the Maristow Estate on behalf of The Honourable MJH Lopes. He has owned the land personally since 2012 and through his family since 1798. He believes that the only access over Roborough Down (registered common) is through the Dartmoor Commons Act 1985, which gives walkers and horse riders rights of access over Roborough Down. Members of the public have been seen in the area but not specifically using the proposal route. No permission has been given and no Section 31(6) deposit has been made. He does not wish the route to be added as a public bridleway as it will introduce bicycle use which currently does not have the right to be on the common.
- 2.5.2 No other affected/adjacent landowners responded to the informal consultation.

2.6 Discussion

- 2.6.1 Since the early part of the 19th century the proposal route has physically existed, as shown on the historical mapping, with the sections between points L – M and Q – P being enclosed lanes accessing Roborough Down. The Tithe Map treats the lanes as part of the local highway network and the Finance Act records exclude the lanes from any hereditament. The aerial and route photographs show the proposal route's characteristics and wear patterns, and that there are no physical restrictions to users. The gates at points M and Q are not locked and are only in position to keep livestock on the Down. When the gate at point M was recently re-hung, there was a notice asking users to shut the gate gently for that reason, demonstrating acceptance of public use of the route.

- 2.6.2 The only landowner response was from the Hon. MJH Lopes who owns Roborough Down, and Land Registry information shows that the access lanes between points L – M and P – Q to that area of the Down are not owned by anyone. In such a situation the law presumes that the adjacent landowners own up to the middle of the lanes. The landowner of Roborough Down, the Hon. MJH Lopes is against the proposed addition of a bridleway across his land as this would give cyclists rights where they currently do not have any.
- 2.6.3 Buckland Monachorum Parish Council continue to support the proposal they first put forward in 1978, and though there are a limited number of user evidence forms from that time, evidence indicates that there is unrestricted use of the proposal route on foot and horseback.
- 2.6.4 However, use of Roborough Down by walkers and horse riders is ‘by right’ rather than ‘as of right’ by virtue of the Dartmoor Commons Act 1985 and therefore cannot be considered under the legal test for presumed dedication.

2.7 Conclusion

- 2.7.1 It is therefore recommended that no Modification Order be made in respect of the proposal but that other options will be considered under delegated powers for the creation of public bridleways between points L – M and P – N to link Coppicetown Lane with the common land of Roborough Down, through negotiation with the landowners.

3 Proposal 5: Proposed upgrade of Footpath No. 28 to a bridleway between Uppaton and Magpie across Roborough Down, as shown between points R – S – T on plan HCW/PROW/14/14.

Recommendation: That no Modification Order be made in respect of Proposal 5.

3.1 Background

- 3.1.1 The proposal was put forward by the Buckland Monachorum Parish Council as part of an earlier but incomplete review in 1978.

3.2 Description of the Route

- 3.2.1 The route starts at the junction with the Y2016 county road opposite Uptown Lane at point R and runs north north eastwards across Roborough Down, under Magpie Viaduct at point S to point T opposite Walkham Cottages.

3.3 Documentary Evidence

- 3.3.1 Tithe Map, 1842. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

- 3.3.2 The proposal is not shown presumably because it runs across common land, Roborough Down, is listed without owners or occupiers.
- 3.3.3 Ordnance Survey mapping, 1809-1953. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".
- 3.3.4 This shows the physical existence of the proposal route.
- 3.3.5 Finance Act, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

The proposal is shown totally included in hereditament 590.

- 3.3.6 Aerial photography, 1946-9 & 2006-7. The photography shows the characteristics of the physical existence wear patterns of the proposal route and many others across Roborough Down, though this is not evidence of status.

3.4 Supporting & User Evidence

- 3.4.1 Requests for the proposal to be upgraded appear to have started in 1971 in response to an incomplete review and continued through 1973 and into 1978 when formally proposed by the Buckland Monachorum Parish Council. They described the proposed bridleway as running between Uppaton and Magpie and attached 2 user evidence forms, detailing use between 1952 and 1978 for visiting friends and riding. They were never turned back, stopped or challenged, and never saw any notices.
- 3.4.2 Buckland Monachorum Parish Council supports the proposal, but has not submitted further user evidence in support under the current Review.

3.5 Landowner Evidence

- 3.5.1 A Landowner evidence form was received from the Maristow Estate on behalf of the Honourable MJH Lopes. He has owned the land personally since 2012 and through his family since 1798. He states the route should remain a footpath as horse riders have access through the Dartmoor Commons Act 1985. Members of the public have been seen in the area. No permission has been given and no Section 31(6) deposit has been made. He does not wish the route to be added as a bridleway as it will introduce bicycle use which currently does not have the right to be on the common.

3.6 Discussion

- 3.6.1 Since the early part of the 19th century the proposal route has physically existed, as shown on the historical mapping across Roborough Down. The Tithe Map does not show the route or any other which crosses Roborough Down, while the Finance Act records shows it wholly included within hereditament 590.
- 3.6.2 The aerial and route photographs show the proposal route' characteristics and wear

patterns, and that there are no physical restrictions to users.

- 3.6.3 The landowner of Roborough Down, the Hon. MJH Lopes is against the proposed addition of a bridleway across his land as this would give cyclists rights where they currently do not have any.
- 3.6.4 Buckland Monachorum Parish Council continue to support the proposal they first put supported in 1971, and though there are a limited number of user evidence forms from that time, evidence indicates that there has been unrestricted use of the proposal route on horseback.
- 3.6.5 However, use of Roborough Down by walkers and horse riders is 'by right' rather than 'as of right' by virtue of the Dartmoor Commons Act 1985 and therefore cannot be considered under the legal test for presumed dedication.

3.7 Conclusion

- 3.7.1 It is therefore recommended that no Modification Order be made in respect of the proposal.

4 Proposal 6: Proposed addition of a bridleway between The Glen and New Hill, Milton Combe, as shown between points V – W on plan HCW/PROW/14/15.

Recommendation: That a Modification Order be made to add a footpath in respect of Proposal 6.

4.1 Background

- 4.1.1 The proposal was put forward by a member of the public resident in Milton Combe as a Schedule 14 application for the addition of a bridleway between the Main Street and New Hill just south of Milton Combe village in response to the parish review and has been picked up accordingly.

4.2 Description of the Route

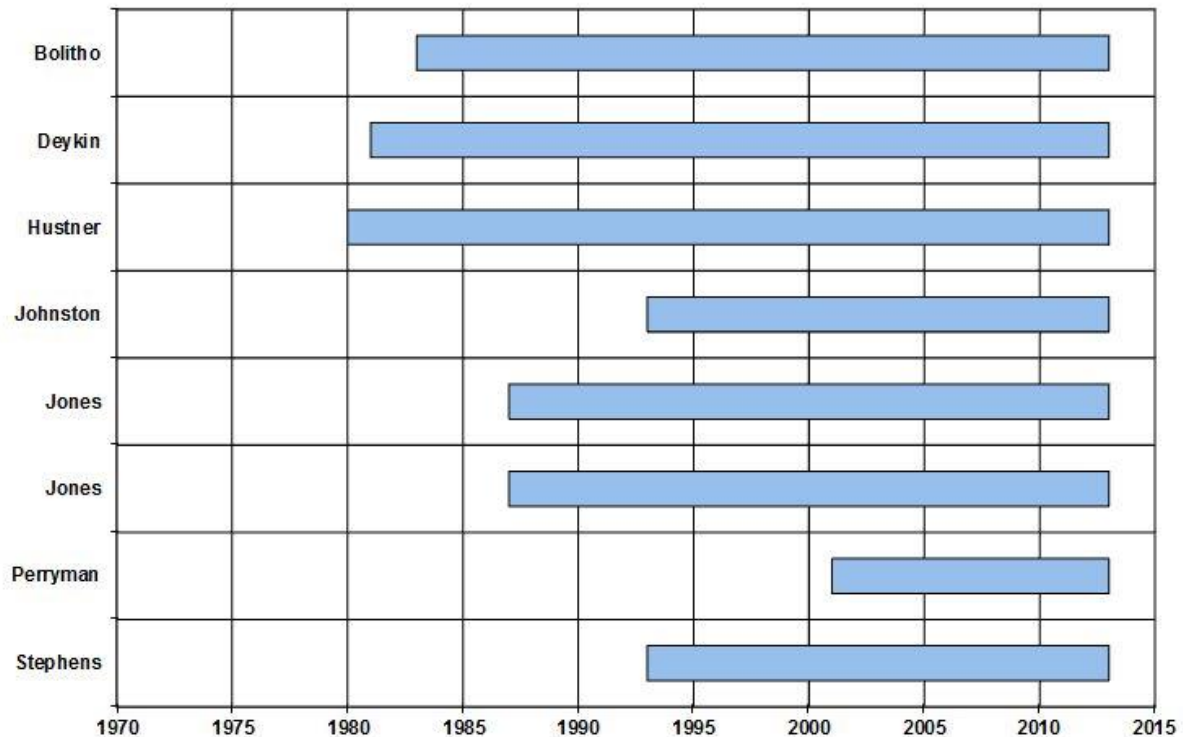
- 4.2.1 The route starts at the junction with the Y2843 Main Street through Milton Combe at point V adjacent to the entrance to The Glen and runs south south westwards through woodland along a track to point W on New Hill.

4.3 Supporting Evidence

- 4.3.1 Buckland Monachorum Parish Council supports the proposal.

4.4 User Evidence

- 4.4.1 Seven user evidence forms were received from 8 people in Milton Combe in support of the application. The forms detail use of the proposal route on foot since at least 1980 on a daily basis, often as part of a circular route in conjunction with other public rights of way or a walk southwards to Lopwell, to avoid walking along the southern end of Main Street which is prone to flooding. Four of the users believe the route is a bridleway, though only one of them has used the route on horseback. No-one was ever challenged or turned back, and no notices erected against public use. A gate is located at point W but this has never been locked.



4.5 Landowner Evidence

- 4.5.1 A Landowner evidence form was received from the Maristow Estate on behalf of the Walkhampton Trust which has owned the affected land for many years. They do not believe the path to be public, having not seen anyone using the route during the last 14 years. No one has ever been stopped or turned back, or prevented from using the route, though fallen trees have occasionally obstructed the route. No permission has been given and no Section 31(6) deposit has been made.
- 4.5.2 The owners of 'The Glen' also responded to the consultation, and have regarded any crossing of the bottom of their driveway to reach the claimed path as permitted access. However, this area is not registered with Land Registry. It is not clear if they have ever made the permitted access stance clear to members of the public.

4.6 Discussion

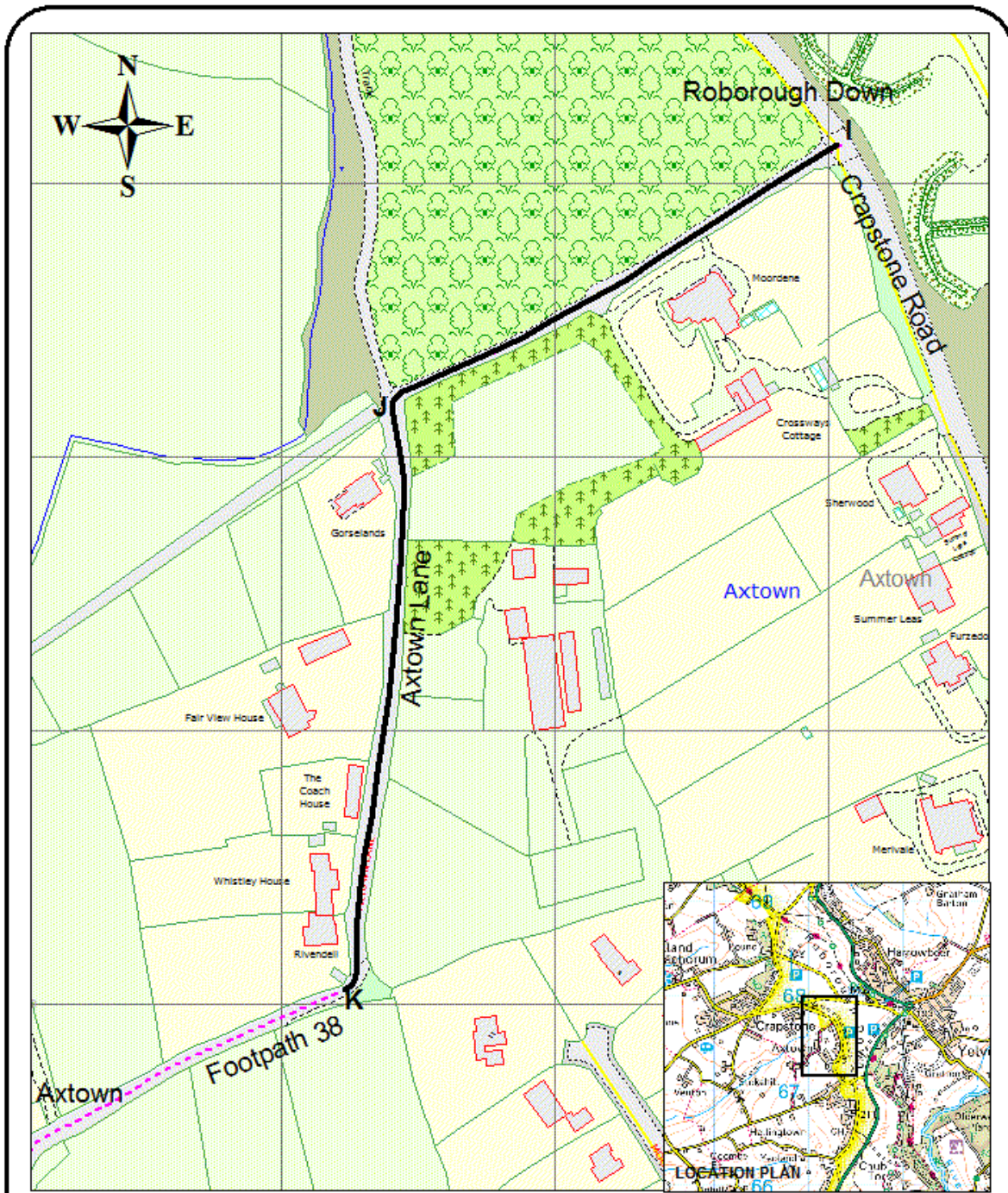
- 4.6.1 The making of the Schedule 14 application has acted as the event which calls the public's use of the route into question, from which the 20 year period to be considered under statute law can be calculated. The application was made in 2013 so therefore the relevant period to be considered is 1993 to 2013.
- 4.6.2 The user evidence demonstrates that the public have had unrestricted access along the proposal route for many years, mainly on foot including during the relevant period. Though there has been some use on horseback, it is insufficient for consideration of the route as a bridleway. It details continuous and uninterrupted use on foot without force, secrecy or permission, as of right since at least the early 1980s.
- 4.6.3 No-one has been challenged, or turned back, and the route has not been obstructed to prevent public access. There have been no notices and no Section 31(6) deposit has been made for the woodland the proposal route runs through. Consequently,

there is insufficient evidence to demonstrate a lack of intention to dedicate.

- 4.6.4 The evidence is considered to be sufficient to demonstrate presumed dedication under both statute and common law, and that on the balance of probabilities that the claimed route is reasonably alleged to subsist.

4.7 Conclusion

- 4.7.1 It is therefore recommended that a Modification Order be made in respect of the proposal to add a footpath to the Definitive Map and Statement, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref **SX 5067**

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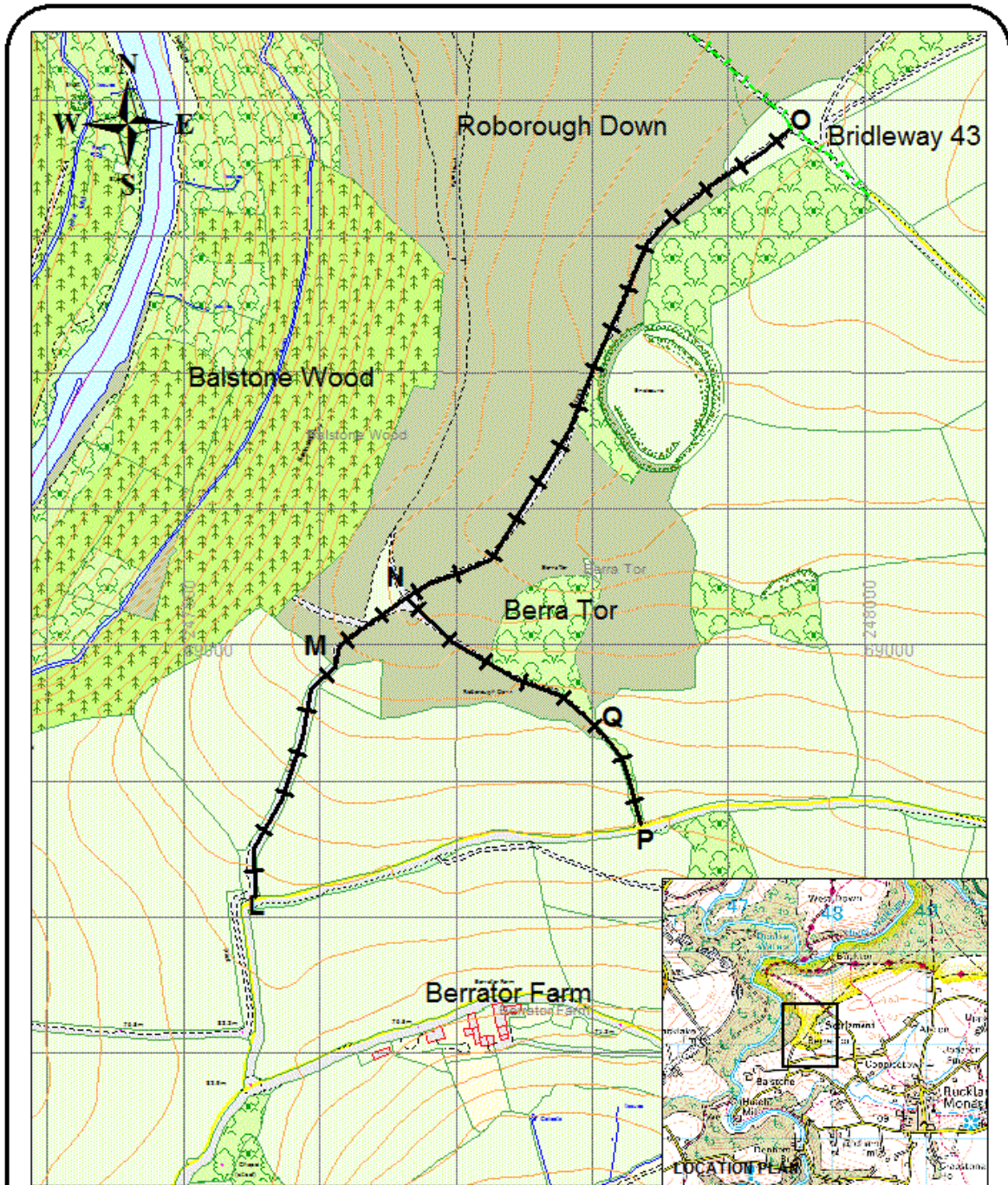
Devon County Council
Definitive Map Review - Buckland Monachorum
Proposal 3 - Proposed deletion of part of
Footpath No. 38 at Axtown Lane

drawing number **HCW/PROW/14/12**
 date **April 2014**
 scale **1:2,500**
 drawn by **CLG**

Notation
 Footpath No. 31 to be deleted I - J - K (407m) —
 Existing footpaths - - - -


David Whitton
 Head of Highways, Capital Development & Waste

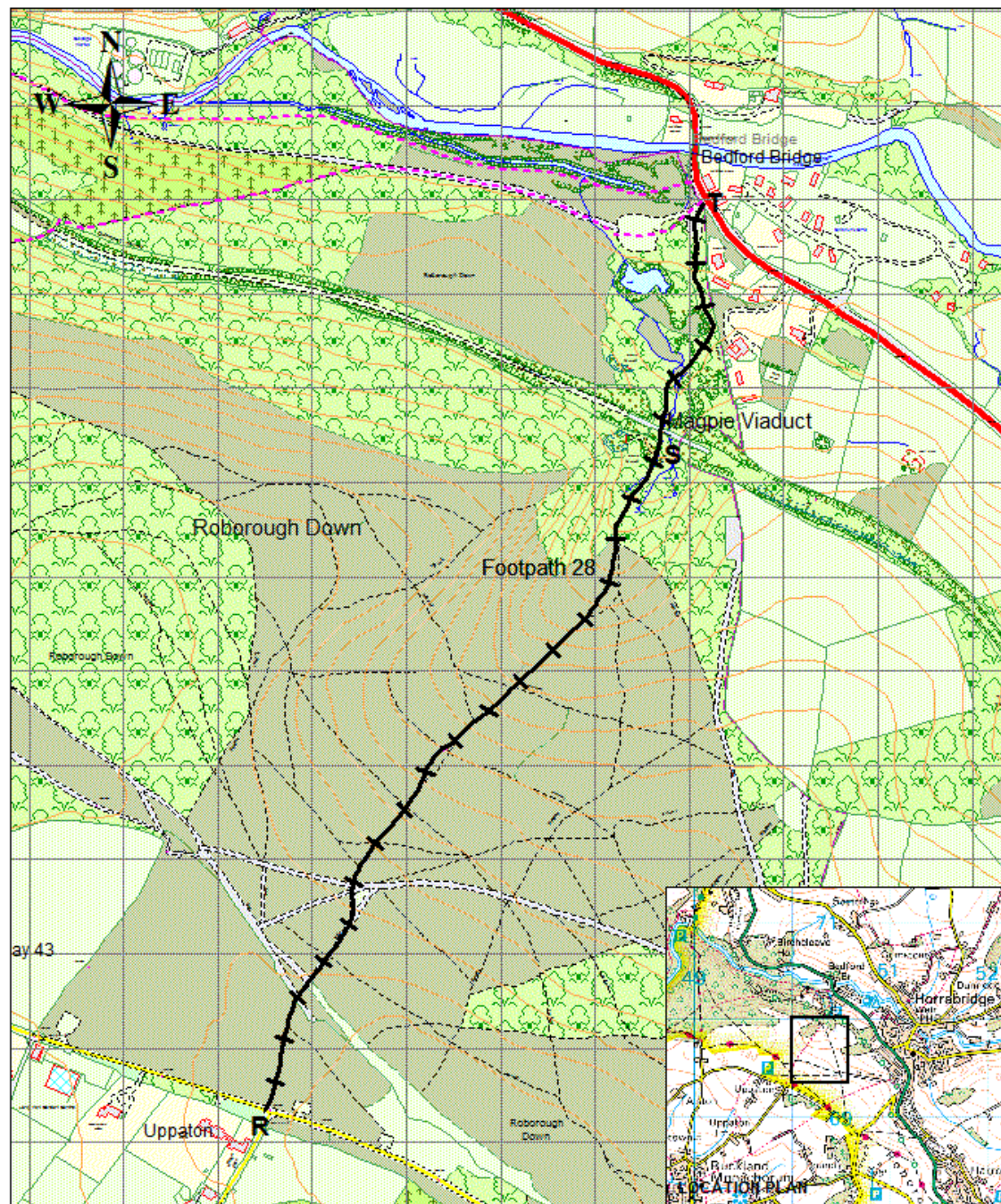




map ref: SX 4768 & 4769

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<p align="center">Devon County Council Definitive Map Review - Buckland Monachourm Proposal 4 - Proposed addition of a bridleway near Berra Tor</p>	<p>drawing number <u>HCW/PROW/14/13</u> date <u>April 2014</u> scale <u>1:5,000</u> drawn by <u>CLG</u></p>
<p>Notation Proposed bridleway to be added L - M - N - O (approx 725m) —+—+— P - Q - R (approx 252m) —+—+— Existing bridleways —+—+—</p>	<p align="center">Devon County Council </p> <p>David Whitton Head of Highways, Capital Development & Waste</p>



map ref. SX 4768 & 4769

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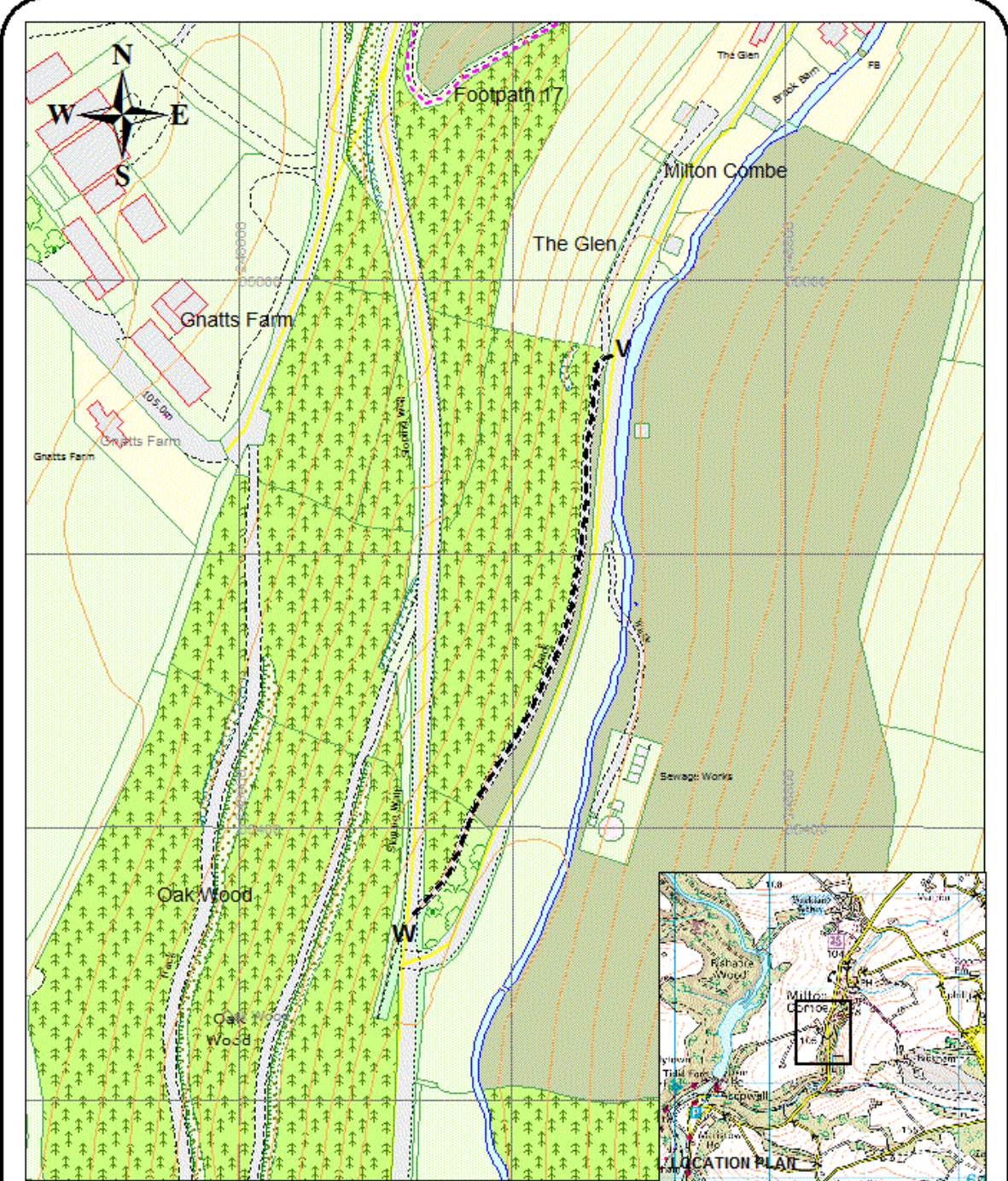
Devon County Council
Definitive Map Review - Buckland Monachorum
Proposal 5 - Proposed upgrade of Footpath No. 28
to bridleway across Roborough Down

drawing number HCW/PROW/14/14
 date April 2014
 scale 1:7,500
 drawn by CLG

Notation
 Proposed bridleway to be added R - S - T (approx 1,130 m) —+—
 Existing bridleways —|—

David Whitton
 Head of Highways, Capital Development & Waste





map ref: SX 4768 & 4769

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Devon County Council
Definitive Map Review - Buckland Monachourm
Proposal 6 - Proposed addition of a footpath
south of Milton Combe

drawing number HCW/PROW/14/15
 date April 2014
 scale 1:2,500
 drawn by CLG

Notation
 Proposed footpath to be added V - W (approx 226 m) - - -
 Existing footpaths - - -

David Whitton
 Head of Highways, Capital Development & Waste

